

Railroads. When the Rail Cost Adjustment Factor adopted by the Board differs from that proposed by the Association of American Railroads the notice period shall be not less than five days. Reductions to rates published in the initial RCCR tariff may be published on one day's notice during the period between the publication of the tariff and the first day of the calendar quarter for which that tariff applies.

(e) Increases in rates consistent with these standards will not be investigated or suspended by the Board unless the filing results in a double recovery of inflation-based cost increases.

(f) All cost recovery tariffs filed with the Board shall state that they are being filed in conformity with the rules in 49 CFR 1135.1 and 1312.17(k), and shall be amended under the same timetable applicable to rate increases, to reflect declines in the cost index. Any declines in the index below the level in effect on December 31, 1985, will be addressed by postponing authorizations for future cost recovery rate increases pursuant to a "banking" procedure described more fully in Ex Parte No. 290 (Sub-No. 2), *Railroad Cost Recovery Procedures*, served October 17, 1986.

(g) In accordance with the procedures outlined in §1312.17(k), each carrier shall timely file (either directly or through a duly authorized tariff-publishing agent) with the regulatory authority of each State in which it operates, all tariffs filed with the Board in accordance with these procedures. The carrier will file with the State at the same time that it files with the Board.

[46 FR 22599, Apr. 20, 1981; 46 FR 51255, Oct. 19, 1981, as amended at 46 FR 55270, Nov. 9, 1981. Redesignated and amended at 47 FR 49576, Nov. 1, 1982; 50 FR 88, Jan. 2, 1985; 50 FR 37534, Sept. 16, 1985; 50 FR 43396, Oct. 25, 1985; 51 FR 37035, Oct. 17, 1986; 54 FR 12920, Mar. 29, 1989; 61 FR 7427, Feb. 28, 1996]

PART 1137—PROCEDURES RELATING TO RAILROAD REVITALIZATION AND REGULATORY REFORM ACT OF 1976

Sec.

1137.1 Divisions of revenue cases.

1137.2 Expeditious procedures for publication of separate rates for distinct services.

AUTHORITY: 49 U.S.C. 721, 10705.

§ 1137.1 Divisions of revenue cases.

(a) *Notice of intent to file complaint.*

(1) An original and 10 copies shall be filed for Board use. Complainant shall serve copies of the notice upon each party (each receiver or trustee if a bankrupt line) to the joint rate.

(2) The notice of intent shall state generally: The involved traffic and applicable joint rates, the territorial scope, the participating railroads, and the present and proposed divisions.

(3) The notice shall include a statement indicating when filing of the formal complaint is expected. The formal complaint may not be filed more than one year after the filing of the notice of intent, unless the Board approves an extension of time. Lack of diligence in filing of the formal complaint may result in dismissal of the action.

(b) *Notice of intent to file cross complaint.* These notices shall be filed within 30 days from service of the original notice and are subject to the requirements in paragraph (a) of this section.

(c) *Formal complaint (and cross complaint).* The formal complaint (and cross complaint) shall be filed no sooner than 120 days after the filing of the notice of intent unless good cause is shown either for not filing a notice or for a shorter notice period. The request to waive the notice time requirement may be included in the formal complaint or in a separate petition. The formal complaint (or cross complaint) shall contain the case-in-chief. All supporting papers shall be made available to opposing parties for inspection and copying. Complaints (and cross complaints) are subject to the same copy requirements as in paragraph (a) of this section. Complainant (or cross complainant) shall serve copies on each party of record. If circumstances permit, the cross complaint will be consolidated for disposition.

(d) *Answer.* The answer to the formal complaint shall contain the entire case-in-rebuttal. Supporting papers shall be made available to opposing parties for inspection and copying. If the notice of intent procedure was used, the case-in-rebuttal shall be filed

within 30 days from service of the complaint. If the notice procedure is waived, the case-in-rebuttal shall be filed within 5 months of the filing of the complaint. Answers shall be served on each party of record. An original and 10 copies shall be submitted to the Board.

(e) *Further proceedings.* Following submission of defendant's evidence, complainant may, within 2 months, submit reply evidence which shall be served on each party of record. Unless otherwise ordered, no further filing shall be accepted. Divisions cases shall be handled under the modified procedure, unless oral hearing is shown to be necessary.

(f) *Discovery.* If the notice of intent procedure was used, discovery shall be available to all parties only prior to the filing of the complaint. If the notice procedure was not used, discovery shall be available to defendants only and must be exercised under the time restrictions contained in paragraph (d) of this section. Prehearing conferences may be requested to adjudicate discovery requests, or they may be resolved by written pleadings.

(g) *Evidentiary guidelines.* (1) Traffic and cost studies, either individual or joint, may be submitted. Studies shall be accepted for consideration as long as they do not delay the process or conflict with other applicable deadlines. Cost studies should be developed, absent a more specific method, in accordance with Rail Form A (or URCS, if implemented), adjusted to reflect the specific traffic and updated to a current level. Studies may include the types of evidence discussed in appendix D of *Expeditionary Handling of Divisions of Revenue Cases*, 353 I.C.C. 349, 388 (1976).

(2) The following evidentiary standards apply:

(i) Costs associated with exempt or contract traffic shall not be included, except that allocation of certain common costs to regulated traffic may be acceptable if adequately explained.

(ii) Elements of profit, income tax, and passenger, commuter, and LCL deficits are not proper expense items for developing fully allocated cost [See *Rules to Govern Assembling and Presenting Cost Evidence*, 337 I.C.C. 298 (1970)],

but will be treated under the issue of revenue need.

(iii) Passenger and commuter service costs shall be considered only in relation to the carrier's revenue need.

(iv) All subsidies shall be disclosed and explained.

(v) The same divisional basis shall apply on "border point" traffic.

(h) *Time periods for completion of proceedings.* In accordance with section 10705(f)(1)(A)(ii), a party, for good cause, may seek extension of any applicable filing deadline. If a requested extension will result in an evidentiary period in excess of 9 months and the proceeding does not involve Class III carriers, the request shall contain sufficient information to allow the required report to Congress and set forth the reasons why the extension is necessary. When the proceeding involves a railroad in reorganization or a contention that the divisions do not cover the variable costs of handling the traffic, requests for extension of filing deadlines shall be viewed with disfavor. The Act directs us to give these proceedings preference and to take final action at the earliest practicable time. 49 U.S.C. 10705(f)(1)(A)(i).

[48 FR 12105, Mar. 23, 1983, as amended at 53 FR 19302, May 27, 1988]

§ 1137.2 Expeditionary procedures for publication of separate rates for distinct services.

(a) *Purpose.* These regulations are designed to facilitate the publication of and thus encourage the use of separate rates for distinct rail services. Increased utilization of such rates will also increase the attractiveness of investing in railroads and rail service related enterprises by creating a keener competition among rail carriers and other modes of transportation. Encouraging these goals, the Board also seeks to promote experimentation and innovative ratemaking through the initiation of rail carriers and the requests of their customers. Special permission requests for publication on short notice will be granted whenever feasible, and any proceedings involving separate rates for distinct services will be expedited.

(b) *Definitions.* (1) Distinct rail services are those railroad transportation

services, which are separate from line-haul transportation services necessary for the movement of freight, and for which a specific tariff item is published by the railroads either upon their own initiative or upon the request of any shipper or receiver of freight.

The following definitions refer to those factors included in § 1137.2(h) in the determination of reasonableness:

(2) The term “cash-outlays” as used in 49 U.S.C. 10728 shall consist of the following:

(i) The annualized operating expenses, rents and taxes (including labor, materials and supplies, fuel and utilities, but excluding depreciation, amortization, and Federal income taxes) which change directly with the carrier’s production of a distinct rail service.

(ii) The annualized cash-outlays equivalent to the carrier’s capital investment, including the cost of providing such capital, which change directly with the carrier’s production of a distinct rail service. These cash-outlays may be determined based on either the cost of sunk and new investment combined or the cost of new investment only.

(3) Demand is the willingness of a shipper to purchase a distinct rail service (as that term is defined in § 1137.2(b)(1)) at a specified price under the prevailing circumstances.

(c) *Title page.* In addition to requirements of § 1312.12, a tariff title page must also state whether the tariff or supplement contains new or changed rates for distinct rail services as defined in § 1137.2(b) and bear the following notation:

This tariff (or supplement or loose leaf amendment) contains separate rates for distinct rail services (see item(s)____) within the meaning of § 1137.2(b).

(d) *Letters of transmittal.* In connection with separate rates for distinct rail services filed with the Board, the letter of transmittal (required in § 1312.4) must also bear the notation found in § 1137.2(c).

(e) *Justification statements.* Justification statements in support of the publication of a separate rate or charge for a distinct rail service may be filed concurrently with the filing of the tariff.

Information of the type specified in § 1137.2(h), if included in the justification statement, would assist the Board in its initial evaluation of the proposal.

(f) *Protest(s) and investigation.* Protests to a tariff (or supplement) making reference on the title page to § 1137.2(b) must be verified and filed in accordance with § 1132.1(g). In the event of investigation or suspension, these proceedings will be accorded priority, and modified procedure (49 CFR Part 1112), to the extent feasible, will be followed.

(g) *Reply to protest.* Replies to protests of rates proposals under this section must be verified and should be filed and served promptly in accordance with § 1132.1(f). Respondents are urged to submit the information specified in § 1137.2(h) unless previously furnished.

(h) *Initial statement.* In order to expedite the proceedings in the event of the suspension of tariff schedules setting forth separate rates for distinct rail services or in the event that investigation without suspension of such schedules is ordered, respondent railroad or railroads shall submit in writing, under verification, support of the tariff in issue. Such data should consist of the following:

(1) *Cash-outlays.* The dollars of “cash-outlays” as that term is defined in § 1137.2(b)(2). A full explanation of the methods, procedures and data used to determine “cash-outlays” should be supplied.

(2) *Demand.* Evidence supporting existence of a “demand” for the proposed service as that term is defined in § 1137.2(b)(3).

(3) *Market dominance.* If the proposal involves a new or increased charge for a distinct service, evidence prepared in accordance with the guidelines established in Ex Parte No. 320 (Sub-No. 2), 365 ICC 118 should be supplied. However, if such data has been previously submitted in the same proceeding, a notation to that effect will suffice.

(4) *Revenues.* The annualized dollars of revenue to be obtained from the rate or charge associated with providing the distinct rail service.

(5) *Outputs.* The annualized number of service outputs associated with the

rate or charge per service unit. For example, if the proposed rate is stated in cents per hundredweight, per car switched, or per stop, then the number of service outputs should be expressed as x number of hundredweight, cars switched, or stops made.

(6) *Ratios.* The revenue-to-cost ratio (percentage) for the distinct rail service, based on the revenues to be obtained, and the carrier's "cash-outlays."

(7) *Effect.* A statement as to how the proposed rate on the distinct rail service will encourage competition; promote increased reinvestment by the railroad; or encourage and facilitate increased non-railroad investment in the production of rail services.

(8) *Alternative data.* The submission of the above evidence, paragraphs (h)(1) through (7) of this section, represents data which the Board believes would provide a basis for meaningful analysis of the lawfulness of such rates. However, in lieu thereof or in addition thereto, respondents may justify their proposal on the basis of other relevant evidence or cost levels. A full explanation of the methods and procedures used shall be provided.

(i) *Reporting requirements.* For the 6-month period beginning February 5, 1977, all common carriers by rail, subject to 49 U.S.C. 11145; shall submit information showing those distinct rail service rates published in accordance with 49 U.S.C. 10728, showing actual or estimated revenues derived therefrom during the 6-month period. In addition, these reports, which shall be filed with the Board by July 30, 1977, shall state whether the rates accomplished their intended purpose, and if not whether they intend any change in the level of charge or other change.

[42 FR 9024, Feb. 14, 1977; 42 FR 36265, July 14, 1977, as amended at 42 FR 62139, Dec. 9, 1977. Redesignated and amended at 47 FR 49576, Nov. 1, 1982; 48 FR 44827, Sept. 30, 1983; 50 FR 37534, Sept. 16, 1985]

PART 1139—PROCEDURES IN MOTOR CARRIER REVENUE PROCEEDINGS

Subpart A—Common Carriers of General Commodities

Sec.

- 1139.1 Application.
- 1139.2 Traffic study.
- 1139.3 Cost study.
- 1139.4 Revenue need.
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APPENDIX I TO SUBPART A

APPENDIX II TO SUBPART A

Subpart B—Intercity Bus Industry

- 1139.20 Application.
- 1139.21 Study carriers.
- 1139.22 Revenue data for study carriers.
- 1139.23 Revenue need.
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SCHEDULES TO SUBPART B

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SCHEDULE B

SCHEDULE C

SCHEDULE D

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APPENDIX I TO SUBPART B

AUTHORITY: 49 U.S.C. 721, 13703.

Subpart A—Common Carriers of General Commodities

SOURCE: 47 FR 49577, Nov. 1, 1982, unless otherwise noted.

§ 1139.1 Application.

(a) Upon the filing by the tariff publishing agencies named hereinafter on behalf of their motor common carrier members, or by such other agencies as the Board may by order otherwise designate, of agency tariff schedules which contain (1) proposed general increases in rates or charges on general freight